

Filed

MAR 27 2012

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND

100 Community Place, Suite 3301
Crownsville, Maryland 21032

Petitioner

v.

JOHN WILLIAM SELLERS

2256 Fox Hatch Place
Jeffersonton, Virginia 22724

Respondent

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IN THE
COURT OF APPEALS
OF MARYLAND

Misc. Docket AG

No. _____

September Term, 2011

Justice M. Decker, Clerk
Court of Appeals
of Maryland

**PETITION FOR DISCIPLINARY
OR REMEDIAL ACTION**

The Attorney Grievance Commission of Maryland, Petitioner, by Glenn M. Grossman, Bar Counsel, and Raymond A. Hein, Deputy Bar Counsel, its attorneys, files this Petition for Disciplinary or Remedial Action against John William Sellers, Respondent, and represents to the Court as follows:

1. Respondent was admitted to the Bar of this Court on December 14, 1995. He does not maintain an office for the practice of law in Maryland.
2. Pursuant to Maryland Rule 16-751, the Attorney Grievance Commission has directed Bar Counsel to file professional misconduct charges against Respondent as set forth in this petition.

Background

3. During the period pertinent to the charges set forth herein, Respondent was employed as a trial attorney in the Asset Forfeiture and Money Laundering

Section (hereafter "AFMLS") of the Criminal Division of the United States Department of Justice (hereafter "DOJ").¹

4. In the course of his DOJ employment prior to and during 2007, Respondent represented the United States Government in connection with an investigation of illegal money laundering allegedly transacted through bank accounts at American Express Bank International (hereafter "AEBI"), an international banking subsidiary of American Express Bank Ltd. (hereafter "AEBL").² The Government's investigation extended to reviewing the conduct of individual bank managers and officers who allegedly failed to implement effective compliance programs to discover and prevent money laundering, as required by the federal Bank Secrecy Act, 31 U.S.C. § 5311, et seq.
5. As of the beginning of 2007, Sergio Masvidal was the Chairman of AEBI, Vice Chairman of AEBL and the head of private banking worldwide for American Express Bank. Mr. Masvidal had worked in international banking for over 35 years and previously served as President and Chief Executive Officer of AEBI for many years.
6. Beginning in January 2007, Respondent engaged in a series of communications with outside defense counsel retained to represent AEBI in connection with the Government's money laundering investigation. The law firm of Debevois & Plimpton in New York City represented AEBI. Andrew Ceresney, Esquire of that firm served as lead counsel.

¹ Respondent no longer holds that position.

² At the time, both AEBI and AEBL operated under the corporate umbrella of American Express Company.

7. By late April 2007, AEBI and AFMLS had reached an agreement in principle on terms by which the criminal investigation of AEBI would be resolved through a deferred prosecution agreement (DPA).³ As part of their discussions concerning the proposed settlement, Mr. Ceresney communicated to Respondent that Mr. Masvidal and Simon Amich, President of AEBI, would not continue their employment with AEBI after a prospective sale of the bank.

A. The Management Side Letter

8. Because both attorneys agreed it would be inappropriate to include names of AEBI senior management officials who would not be retained within the DPA, which would be a public document, Mr. Ceresney and Respondent agreed to create a "management side letter" addressing the continued employment of Mr. Masvidal and Mr. Amich. Respondent and Mr. Ceresney exchanged several drafts of such a letter over an approximately two-month period starting in June 2007. Respondent did not share any of the drafts with his supervisors in AFMLS.
9. The final version of the management side letter was dated August 2, 2007, printed on DOJ letterhead, addressed to Mr. Ceresney and signed by Respondent. The reference line of the letter stated "AEBI Retention of Officers Pursuant to Deferred Prosecution Agreement."
10. In the event of a prospective sale of AEBI, the August 2, 2007 management side letter executed by Respondent obligated the purchasing entity to inform DOJ if it wished to retain Mr. Masvidal and/or Mr. Amich following the closing of any such transaction and made their continued employment subject to the consent of

³ A DPA essentially serves as a settlement agreement allowing criminal charges to be filed against a corporate criminal defendant, but stayed, in order to give the corporation an opportunity to take remedial actions set forth in the DPA within an agreed period of time, after which the charges are dismissed.

DOJ. In addition, if AEBI was not sold and the bank wanted to continue employing Mr. Masvidal and/or Mr. Amich following the expiration of the DPA, the management side letter obligated AEBI to obtain DOJ's consent in advance of such continued employment.

11. Mr. Masvidal was not informed of the management side letter or the terms relating to his continued employment with AEBI prior to the issuance of said letter from Respondent to Mr. Ceresney.
12. Respondent did not obtain approval for the August 2, 2007 management side letter from anyone within AFMLS. He was not authorized by DOJ to enter into a side agreement imposing affirmative obligations on AEBI that were outside the scope of the public DPA.
13. By executing the management side letter without the knowledge or approval of his client (DOJ/AFMLS), Respondent violated Rule 1.4(a)(1) and (a)(2) of the Maryland Lawyers' Rules of Professional Conduct.

B. The Debarment Side Letter

14. At or about the same time Respondent and Mr. Ceresney began exchanging drafts of the management side letter, they also began the process of creating a separate "debarment side letter." The purpose of the debarment side letter, proposed by Mr. Ceresney, was to provide assurance that DOJ would not seek to have any American Express subsidiary other than AEBI debarred from doing business with the United States Government as a result of AEBI's criminal actions.
15. The final version of the debarment side letter was dated August 2, 2007 (the same date as the management side letter), printed on DOJ letterhead, addressed to Mr.

Ceresney and signed by Respondent. The reference line of the letter stated "DOJ Position on Debarment."

16. As with the management side letter, Respondent did not share drafts of the debarment side letter with his supervisors in AFMLS and did not obtain approval for such a letter from anyone within AFMLS. He was not authorized by DOJ to execute the August 2, 2007 debarment side letter.
17. By executing the debarment side letter without the knowledge or approval of his client (DOJ/AFMLS), Respondent violated Rule 1.4(a)(1) and (a)(2) of the Maryland Lawyers' Rules of Professional Conduct.

C. The Deferred Prosecution Agreement

18. On August 3, 2007, DOJ and AEBI executed the DPA. Simon Amich signed the agreement on behalf of AEBI in his capacity as President and Chief Executive Officer. Mr. Ceresney signed as counsel for AEBI. Respondent was one of three AFMLS attorneys who signed on behalf of the Government.
19. The DPA provided that AEBI waived indictment and agreed to the filing of a one-count criminal information in the United States District Court for the Southern District of Florida. The information charged AEBI with failing to maintain an effective anti-money laundering program, in violation of 31 U.S.C. §§ 5318(h)(1) and 5322(a).
20. The DPA made reference to a "Factual Statement" attached as an appendix and incorporated by reference. At paragraph 40 of the Factual Statement, there was a phrase stating that "employees who failed to take vigorous action to support compliance efforts have either left AEBI or left their positions." This general

statement was the only reference to the status of any AEBI employees contained within the DPA and the Factual Statement.

21. Among its other provisions, the DPA provided, at paragraph 17:

This Agreement sets forth all the terms of the Deferred Prosecution Agreement between AEBI and the United States. No promises, agreements, or conditions shall be entered into and/or are binding upon AEBI or the United States unless expressly set forth in writing, signed by the United States, AEBI's attorneys, and a duly authorized representative of AEBI. This Agreement supersedes any prior promises, agreements or conditions between AEBI and the United States.

22. The DPA did not refer to or incorporate the August 2, 2007 management side letter or the August 2, 2007 debarment side letter, or the respective terms of either letter, into the agreement.
23. On August 6, 2007, the United States Government filed an Information against AEBI in the United States District Court for the Southern District of Florida.⁴ The matter was docketed in that court as *United States of America v. American Express Bank International*, Case No. 07-20602-CR-ZLOCH.
24. With the Information, the parties simultaneously filed the DPA and a joint motion to approve the DPA.⁵ Neither the management side letter nor the debarment side letter was filed with the court.
25. By participating in the filing of the Information and DPA without disclosing the existence and substantive terms of the management side letter and the debarment side letter, Respondent violated his duty of candor to the tribunal under Rule 3.3(a)(1) of the Maryland Lawyers' Rules of Professional Conduct. Both side letters contained material terms of the settlement between DOJ and AEBI, thereby

⁴ Respondent was one of the attorneys who signed the Information on behalf of DOJ.

⁵ The court approved the DPA on October 29, 2007.

rendering false the representation to the court set forth in paragraph 17 of the DPA (quoted above in paragraph 20 of this petition).

26. Respondent's conduct additionally violated Rule 8.4(c) in that he knew of a misrepresentation contained within the DPA at the time of its filing with the court.
27. Respondent's conduct additionally violated Rule 8.4(d) in that his non-disclosure to his client and to the court of the two side letters he executed on August 2, 2007 constituted conduct prejudicial to the administration of justice.

**D. Respondent's Conduct Following Masvidal's
Discovery of the Management Side Letter**

28. In September 2007, Mr. Masvidal learned about the management side letter when he sought to obtain a consulting position with Standard Chartered PLC of Great Britain, which had submitted the winning bid to purchase AEBL, including AEBI.
29. Mr. Masvidal initially sought assistance, without success, from AEBL management personnel and counsel in trying to have the management side letter rescinded. Thereafter, he retained the legal services of James W. Cooper, Esquire, an attorney in the Washington, D.C. office of Arnold & Porter LLP.
30. On November 17, 2007, Mr. Cooper contacted Respondent by telephone for the purpose of trying to persuade Respondent to have DOJ withdraw the management side letter and issue a letter stating that Mr. Masvidal was not responsible for any of AEBI's violations.
31. In the course of Mr. Cooper's November 17, 2007 telephone conversation with Respondent, Respondent indicated to Mr. Cooper that Mr. Masvidal was still a subject of the Government's criminal investigation and that the Government had

not yet decided whether he should be charged. Respondent did not have a good faith basis at the time for making such an assertion to Mr. Cooper.

32. Following the telephone contact by Mr. Cooper, Respondent consulted Laurel Loomis Rimón, Deputy Chief for Litigation in AFMLS. Ms. Rimón had no knowledge of the August 2, 2007 management side letter prior to this consultation by Respondent. On December 13, 2007, at Ms. Rimón's direction, Respondent sent a letter to Mr. Ceresney stating that DOJ was voiding and withdrawing the management side letter and that the terms thereof no longer were of any force or effect.
33. Mr. Cooper continued his efforts on behalf of Mr. Masvidal to obtain a letter from DOJ stating that Mr. Masvidal had not engaged in any wrongful conduct, was not responsible for any of AEBI's violations and was not the subject of an ongoing investigation. During a December 18, 2007 telephone conversation with Mr. Cooper, Respondent attempted to extract a promise of a release of civil liability, i.e., a hold harmless agreement, as to DOJ and American Express in exchange for DOJ's issuance of a letter stating that Mr. Masvidal was no longer under investigation.
34. Respondent had no good faith basis at the time of his December 18, 2007 telephone conversation with Mr. Cooper for suggesting that he could negotiate DOJ's position with regard to any criminal investigation of Mr. Masvidal in exchange for a hold harmless agreement. Respondent had not discussed such a *quid pro quo* with his client (DOJ/AFMLS) and was not authorized by DOJ to

“settle” Mr. Cooper’s request on behalf of Mr. Masvidal in the manner proposed by Respondent.

35. In one telephone conversation with Mr. Cooper, Respondent stated a belief that Mr. Masvidal “is bad for banking” and expressed an intention “to follow him for the rest of his life.”
36. Respondent obstructed Mr. Masvidal’s efforts to clear his name, even after he knew there would be no charges brought against Mr. Masvidal, for no substantial purpose other than to embarrass, delay or burden Mr. Masvidal. In doing so, Respondent violated Rule 4.4 of the Maryland Lawyers’ Rules of Professional Conduct.
37. Respondent’s conduct during the period of his communications with Mr. Cooper also constituted conduct prejudicial to the administration of justice, in violation of Rule 8.4(d).

Aftermath

38. On September 18, 2009, Mr. Masvidal, through counsel, filed a civil lawsuit against DOJ and American Express in the United States District Court for the Southern District of Florida. The matter was docketed in that court as *Sergio J. Masvidal v. United States Department of Justice, et al.*, Case No. 09-CIV-61485.⁶
39. Among other requested relief, Mr. Masvidal’s civil complaint sought injunctive relief ordering DOJ “to publish a letter clearing [Mr. Masvidal’s] name of the association with the [criminal] violations set forth in the DPA, in a form to be determined by the Court, and to transmit the letter to all federal, state, and international banking regulators, as requested by Plaintiff.”

⁶ The case was dismissed with prejudice as to defendant American Express on March 29, 2010.

40. On May 28, 2010, as part of an agreement resolving the civil action against DOJ, DOJ issued a name-clearing letter, signed by a Deputy Assistant Attorney General in the Criminal Division, confirming that DOJ's "investigation of AEBI did not reveal any evidence that Mr. Masvidal had committed any criminal offenses or violated any banking regulations."

41. Within the May 28, 2010 name-clearing letter, the Deputy Assistant Attorney General wrote:

Although Mr. Masvidal was not criminally implicated in AEBI's compliance violations, the line prosecutor and AEBI entered into a separate letter agreement, which prohibited Mr. Masvidal from being employed by any entity that purchased AEBI, or from continued employment with AEBI if no purchaser were found, unless the Department of Justice consented in advance to such employment. This separate agreement was not presented to the District Court that was considering the DPA. Such undisclosed letter agreements are not part of the Criminal Division's practice.

42. The "line prosecutor" referenced in the preceding quote from the name-clearing letter was Respondent.

Summary of Misconduct Charges

43. Petitioner charges that Respondent, by his acts and omissions as set forth herein, engaged in professional misconduct as defined in Maryland Rule 16-701(i) and that he violated the following Maryland Lawyers' Rules of Professional Conduct, as adopted by Maryland Rule 16-812:

Rule 1.4. Communication.

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

- (2) keep the client reasonably informed about the status of the matter;

Rule 3.3. Candor Toward the Tribunal.

- (a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Rule 4.4. Respect for Rights of Third Persons.

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the lawyer knows violate the legal rights of such a person.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Maryland Lawyers' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;


- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;

43. As stated in Rule 8.5(a)(1), "[a] lawyer admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the lawyer's conduct occurs."

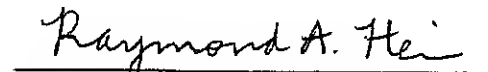
WHEREFORE, Petitioner prays this Honorable Court:

- A. Take such disciplinary action against the Respondent as it deems appropriate;
B. Assess against the Respondent in the form of a money judgment, the reasonable costs of these proceedings both arising subsequent to the filing of these charges and necessarily incurred in investigating the same prior to the filing of said charges; and
C. Take such other and further action as this Court may deem just and proper under the circumstances.

Respectfully submitted,



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